IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.107 OF 1996

Smt. Mangal Dilip Kothari, age 35 years, Occ. Business, R/o. 570, Shani Galli, Raviwar Peth, Nashik. ... Appellant

Versus

1. Dilip @ Dinkar Dattatraya Kahane, age 40, Occ. Business, R/o. H. No.581, Shani Galli, Raviwar Peth, Nashik.
2. The State of Maharashtra ... Respondents (Respondent No.1 - Original accused).

Mr. P.N. Joshi for the appellant.

Ms. V.R. Bhosale, A.P.P. for respondent 2-State.

CORAM : SMT. RANJANA DESAI, J.

DATED : 4TH SEPTEMBER, 2007.

ORAL JUDGEMENT:-

1. This appeal is preferred by the original complainant challenging the judgment and order dated 16/7/1993 whereby

respondent 1 (for convenience “the accused”) is acquitted of the offence punishable under section 138 of the Negotiable Instruments Act.

2. It would be advantageous to narrate the facts of the case. The case of the complainant PW-1 Mangal as evident from the complaint and her evidence is that the accused is a friend of her husband and on the say of her husband, she had lent an amount of Rs.50,000/- to the accused for doing some business. The accused issued a cheque dated 22/10/1991 for Rs.50,000/- in her favour on the very day of the transaction. In support of this case, she has filed the said cheque which is at Ex-17. She deposited the said cheque in the Nashik Merchant Co-operative Bank Limited, Bhadrakali Branch, Nashik. It was dishonoured and returned to her with the bank's remark “not arranged for”. In support of her case, she has filed the bank's memo, which is at Ex-18.

3. According to the complainant, when she again deposited the said cheque, the same was dishonoured and returned with the

bank's remark “not arranged for”. In support of her case, she has filed bank's memo, which is at Ex-19. She has also filed a letter and two memos which are at Ex-20 and Ex-21 respectively. She has further stated that she had issued a notice through her counsel on 6/11/1991 calling upon the accused to pay the said amount of Rs.50,000/-. Copy of the said notice is at Ex-22. The accused has sent his reply, which is at Ex-23 denying his liability.

4. The complainant, therefore, filed complaint in the court of Judicial Magistrate, First Class, IIIrd Court, Nasik. In support of her case, the complainant examined herself. The accused examined his brother Chandrakant Kahane. Kahane has stated that the accused owns a grocery shop at Bhadrakali Road. According to him, his elder brother's name is Ratan. He is doing business of jaggry. He wanted to purchase a shop. Therefore, they sold their plot to Bhagvat Bros. According to this witness, the said plot was in his name and also in the name of his brother. According to this witness, they have executed a Sale Deed on 10/10/1991 for a consideration of Rs.1,20,000/-. Xerox copy of the

said sale deed is filed in the court, which is at Ex-41. According to this witness, on 21/10/1991, he and his brother Ratankumar had entered into an agreement with Jamanadas Dulbdas Devi in respect of a shop situated in Ravivar Peth and his brother Ratankumar paid Rs.1,00,000/- for the said transaction. The said agreement is also on record at Ex-42. This witness has further stated that the accused has paid nothing towards the consideration of the said shop. He has further stated that the accused had kept his cheque book in the shop of his brother Ratankumar. The said cheque was signed by the accused. According to him, the husband of the complainant used to come to the said shop for chatting. According to him, the husband of the complainant has stolen the cheque, which was signed by the accused, behind back of his brother Ratankumar from his shop. It is obvious that his case is that the said cheque is misused by the complainant.

5. After perusing the evidence on record, the learned Magistrate was of the view that the complainant has failed to prove execution of cheque at Ex-17 by the accused in her favour. In the

circumstances, he acquitted the accused. It is the said judgment and order, which is challenged before me.

6. I have heard, at some length, Mr. Joshi, the learned counsel appearing for the appellant. He contended that the impugned judgment and order is perverse and must be set aside. He submitted that the accused has not denied his signature on the cheque. His story that the cheque book was stolen is obviously a concocted story. It is evident from the evidence of PW-1, the brother of the accused that the accused was really in need of money. In fact, the transaction of purchase of the shop was done by the accused and his brother in October, 1991. Therefore, the case of the complainant that the accused was in need of money is substantiated. He submitted that once the signature on the cheque is admitted, presumption arises in favour of the complainant. The learned counsel for the appellant submitted that therefore the trial court erred in acquitting the accused.

7. The accused has been served. However, nobody is

appearing for the accused.

8. It is well settled by the Supreme Court in ***State of Rajasthan v. Raja Ram (2003) 8 SCC 180*** that unless the judgment of the trial court is perverse, it cannot be interfered with in an appeal against acquittal. If the view taken by the trial court is a reasonably possible view, the order of acquittal cannot be interfered with because the presumption of innocence of the accused is further strengthened by acquittal and if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. An order of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. However, if the view taken by the trial court is a reasonably possible view, it should not be interfered with. In such a situation, it is not open for this court to substitute its own view in place of the trial court's view. It is, therefore, necessary to find out whether the trial court's judgment is perverse and deserves to be set aside. Needless to say that if the trial

court's view is a reasonably possible view, this court will not interfere with it.

9. It is a fact that the cheque is signed by the accused but as rightly noted by the trial court the cheques issued by the accused to various persons are prepared in the years 1986 and 1987. They are from serial nos. 291651 to 291666. Subsequent cheques are from serial Nos.291668 to 291675. They are also from the years 1986 and 1987. Only the disputed cheque bearing No.2916667 (Ex-17) is dated 22/10/1991. Noticing this, the learned Magistrate has held that the case of the complainant that this cheque was issued in discharge of the liability of Rs.50,000/- allegedly given by the complainant to the accused appears to be highly suspicious. In my opinion, this is a reasonably possible view. The evidence of brother of the accused does indicate that the shop was purchased by the brother after selling one of their properties. This case is supported by documentary evidence. If that is so, then the case that the accused was in need of money is also doubtful. Therefore, the defence of the accused that the cheque was stolen is

probabalised. Mr. Joshi, strenuously, contended that if the cheque is stolen nothing prevented the accused from lodging a complaint. It is true that the accused ought to have lodged a complaint but because the accused has not lodged a complaint, in the aforementioned peculiar circumstances, it cannot be said that the case of the complainant that a cheque was issued by the accused in discharge of liability of Rs.50,000/- is proved. In my opinion, in the facts and circumstances of the case, the trial court has rightly given benefit of doubt to the accused. Such a view being a reasonably possible view, it is not possible for me to disturb it in this appeal against acquittal. In the circumstances, the appeal is dismissed.

[SMT. RANJANA DESAI, J.]